

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 616

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; AMENDING PROVISIONS OF
THE PUBLIC EMPLOYEES RETIREMENT ACT CONCERNING RETIREES WHO
RETURN TO EMPLOYMENT; RECONCILING CONFLICTING AMENDMENTS TO THE
SAME SECTION OF LAW IN LAWS 2004 BY REPEALING LAWS 2004,
CHAPTER 2, SECTION 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-11-8 NMSA 1978 (being Laws 1987,
Chapter 253, Section 8, as amended by Laws 2004, Chapter 2,
Section 1 and by Laws 2004, Chapter 68, Section 4) is amended
to read:

"10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--
BENEFITS CONTINUED FOR CERTAIN RETIRED MEMBERS--EMPLOYER
CONTRIBUTIONS.--

A. A member may retire upon fulfilling the

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1 following requirements prior to the selected date of
2 retirement:

3 (1) a written application for normal
4 retirement, in the form prescribed by the association, is filed
5 with the association;

6 (2) employment is terminated with all
7 employers covered by any state system or the educational
8 retirement system;

9 (3) the member selects an effective date of
10 retirement that is the first day of a calendar month; and

11 (4) the member meets the age and service
12 credit requirement for normal retirement specified in the
13 coverage plan applicable to the member.

14 B. The amount of normal retirement pension is
15 determined in accordance with the coverage plan applicable to
16 the member.

17 C. Except as provided in Subsection D or [E] F of
18 this section, a retired member may be subsequently employed by
19 an affiliated public employer [~~if the following conditions~~
20 ~~apply:~~

21 ~~(1) the member has not been employed as an~~
22 ~~employee of an affiliated public employer for at least ninety~~
23 ~~consecutive days from the date of retirement to the~~
24 ~~commencement of employment or reemployment with an affiliated~~
25 ~~public employer. If the retired member returns to employment~~

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1 ~~without first completing ninety consecutive days of~~
 2 ~~retirement:~~

3 ~~(a) the retired member's pension shall~~
 4 ~~be suspended immediately and the previously retired member~~
 5 ~~shall become a member; and~~

6 ~~(b) upon termination of the subsequent~~
 7 ~~employment, the previously retired member's pension shall be~~
 8 ~~calculated pursuant to Paragraph (2) of Subsection E of this~~
 9 ~~section] pursuant to the following provisions:~~

10 (1) for a retired member who has returned to
 11 work prior to July 1, 2009:

12 (a) the retired member shall not have
 13 been employed as an employee of an affiliated public employer
 14 for at least ninety consecutive days from the date of
 15 retirement to the commencement of reemployment;

16 (b) except as provided in Subparagraphs
 17 (c), (d) and (e) of this paragraph, the retired member shall be
 18 subject to the provisions of Subparagraph (f) of this paragraph
 19 on the earlier of: 1) the date that the employment is
 20 terminated; or 2) July 1, 2010;

21 (c) if the governing body of the
 22 affiliated public employer adopts a resolution declaring that
 23 the employment of the retired member will fill a critical need
 24 of the affiliated public employer and the governing body files
 25 a copy of the resolution with the retirement board, a retired

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1 member shall not be subject to the provisions of Subparagraph
2 (f) of this paragraph until the date specified in Subparagraph
3 (d) or (e) of this paragraph;

4 (d) except as provided in Subparagraph
5 (e) of this paragraph, a retired member for whom a resolution
6 has been adopted by a governing body pursuant to Subparagraph
7 (c) of this paragraph shall be subject to the provisions of
8 Subparagraph (f) of this paragraph on the earlier of: 1) the
9 day that the employment is terminated; or 2) July 1, 2012;

10 (e) if, on and after July 1, 2012, the
11 retired member is employed only by a small public employer
12 whose governing body has adopted a resolution pursuant to
13 Subparagraph (c) of this paragraph, the retired member shall
14 not be subject to the provisions of Subparagraph (f) of this
15 paragraph until the earlier of: 1) the date that the
16 employment by the small public employer is terminated; or 2)
17 July 1, 2015; and

18 (f) once subjected to the provisions of
19 this subparagraph by Subparagraph (b), (d) or (e) of this
20 paragraph: 1) the retired member's pension shall be suspended
21 on the first day of the month following the month in which the
22 retired member's earnings from the subsequent employment exceed
23 thirty thousand dollars (\$30,000) in a calendar year; and 2)
24 the retired member shall not be eligible to return to work
25 under any other provision of this subsection;

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1 (2) for a retired member who returns to work
2 on or after July 1, 2009:

3 (a) unless the retired member qualifies
4 pursuant to Subparagraph (d) or (e) of this paragraph, the
5 retired member shall not have been employed as an employee of
6 an affiliated public employer for at least twelve consecutive
7 months from the date of retirement to the commencement of
8 reemployment, or, if the retired member qualifies pursuant to
9 Subparagraph (c), (d) or (e) of this paragraph, the retired
10 member shall not have been employed as an employee of an
11 affiliated public employer for at least ninety consecutive days
12 from the date of retirement to the commencement of
13 reemployment;

14 (b) the retired member shall be, at the
15 time of retirement, sixty-five years of age or older or shall
16 have earned sufficient service credit for the maximum pension
17 available under the retired member's coverage plan. A retired
18 member shall not return to work without meeting the criteria
19 specified in this subparagraph unless the pension of the
20 retired member is suspended;

21 (c) the retired member shall be subject
22 to the provisions of Subparagraph (f) of this paragraph unless
23 the governing body of the affiliated public employer adopts a
24 resolution declaring that the subsequent employment of the
25 retired member will fill a critical need of the affiliated

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1 public employer and the governing body files a copy of the
2 resolution with the retirement board;

3 (d) except as provided in Subparagraph
4 (e) of this paragraph, a retired member for whom a resolution
5 has been adopted by a governing body pursuant to Subparagraph
6 (c) of this paragraph shall be subject to the provisions of
7 Subparagraph (f) of this paragraph on the earlier of: 1) the
8 day that the employment is terminated; or 2) the day
9 immediately following the two-year anniversary of the
10 commencement of reemployment;

11 (e) if, on and after the day immediately
12 following the two-year anniversary of the commencement of
13 reemployment, the retired member is employed only by a small
14 public employer whose governing body has adopted a resolution
15 pursuant to Subparagraph (c) of this paragraph, the retired
16 member shall not be subject to the provisions of Subparagraph
17 (f) of this paragraph until the earlier of the day: 1) that
18 the employment by the small public employer is terminated; or
19 2) immediately following the five-year anniversary of the
20 commencement of reemployment; and

21 (f) once subjected to the provisions of
22 this subparagraph by Subparagraph (c), (d) or (e) of this
23 paragraph: 1) the retired member's pension shall be suspended
24 on the first day of the month following the month in which the
25 retired member's earnings from the subsequent employment exceed

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1 thirty thousand dollars (\$30,000) in a calendar year; and 2)
2 the retired member shall not be eligible to return to work
3 under any other provision of this subsection;

4 (3) as used in Paragraphs (1) and (2) of this
5 subsection:

6 (a) "governing body" means: 1) the
7 governing body of the political subdivision if the affiliated
8 public employer is a political subdivision of the state; 2) the
9 supreme court if the affiliated public employer is in the
10 judicial branch of state government; 3) the district attorney
11 personnel review board if the affiliated public employer is a
12 district attorney; 4) the New Mexico legislative council if the
13 affiliated public employer is in the legislative branch of
14 state government; or 5) the personnel board if the affiliated
15 public employer is not included in Item 1), 2), 3) or 4) of
16 this subparagraph; and

17 (b) "small public employer" means an
18 affiliated public employer that is a political subdivision with
19 a population, as shown in the most recent federal decennial
20 census, of less than fifty thousand;

21 (4) if the retired member returns to
22 employment pursuant to Paragraph (1) or (2) of this subsection
23 without first completing the required ninety consecutive days
24 or twelve consecutive months of break-in service, the retired
25 member's pension shall be suspended immediately;

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1 ~~[(2) effective the first day of the month~~
2 ~~following the month in which the retired member's earnings~~
3 ~~total twenty-five thousand dollars (\$25,000) during a calendar~~
4 ~~year]~~

5 (5) a retired member who returns to employment
6 shall be required to make contributions to the fund as
7 specified in the Public Employees Retirement Act ~~[provided,~~
8 ~~however, that after December 31, 2006, no additional~~
9 ~~contributions shall be required pursuant to this paragraph] or~~
10 in a higher amount adjusted for full actuarial cost as
11 determined annually by the association;

12 ~~[(3)]~~ (6) until the subsequent employment is
13 terminated, the affiliated public employer that employs the
14 retired member shall make contributions to the fund in the
15 amount specified in the Public Employees Retirement Act or in a
16 higher amount adjusted for full actuarial cost as determined
17 annually by the association; ~~[and~~

18 ~~(4)]~~ (7) a retired member who returns to
19 employment during retirement pursuant to this subsection is
20 entitled to receive retirement benefits but is not entitled to
21 acquire service credit or to acquire or purchase service credit
22 in the future for the period of the retired member's
23 reemployment with an affiliated public employer; and

24 (8) until the subsequent employment is
25 terminated, both the retired member and the affiliated public

1 employer that employs the retired member shall make
 2 contributions to the retiree health care fund in the amount
 3 specified in Subsections A and B of Section 10-7C-15 NMSA 1978.

4 D. ~~[The provisions of Paragraphs (2) and (3) of~~
 5 ~~Subsection C of this section that require employee or employer~~
 6 ~~contributions]~~ Except for the provisions of Paragraphs (7) and
 7 (8) of Subsection C of this section, the provisions of the
 8 other paragraphs of that subsection do not apply to:

9 (1) a retired member who is appointed chief of
 10 police of an affiliated public employer, other than the
 11 affiliated public employer from which the retired member
 12 retired, or who is appointed undersheriff; provided that:

13 (a) the retired member files an
 14 irrevocable exemption from membership with the association
 15 within thirty days of appointment;

16 (b) each sheriff's office shall be
 17 limited to one undersheriff qualifying pursuant to this
 18 paragraph;

19 (c) the irrevocable exemption shall be
 20 for the chief of police's or the undersheriff's term of office;
 21 and

22 (d) filing an irrevocable exemption
 23 shall irrevocably bar the retired member from acquiring service
 24 credit for the period of exemption from membership; ~~[or]~~

25 (2) a retired member employed by the

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1 legislature for legislative session work; or

2 (3) a retired member who is elected on or
3 after July 1, 2009 to serve a term as an elected official;
4 provided that:

5 (a) the retired member files an
6 irrevocable exemption from membership with the association
7 within thirty days of taking office; and

8 (b) the irrevocable exemption shall be
9 for the elected official's term of office.

10 E. At any time during a retired member's subsequent
11 employment pursuant to Subsection C of this section, the
12 retired member may elect to suspend the pension.

13 F. When ~~the~~ a pension is suspended pursuant to
14 the provisions of this section, the following conditions shall
15 apply:

16 (1) the retired member who is subsequently
17 employed by an affiliated public employer shall become a
18 member. The previously retired member and the subsequent
19 affiliated public employer shall make the required employee and
20 employer contributions, and the previously retired member shall
21 accrue service credit for the period of subsequent employment;
22 and

23 (2) when a previously retired member
24 terminates the subsequent employment with an affiliated public
25 employer, ~~he~~ the previously retired member shall retire

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1 according to the provisions of the Public Employees Retirement
2 Act, subject to the following conditions:

3 (a) payment of the pension shall resume
4 in accordance with the provisions of Subsection A of this
5 section;

6 (b) unless the previously retired member
7 accrued at least three years of service credit on account of
8 the subsequent employment, the recalculation of pension shall:
9 1) employ the form of payment selected by the previously
10 retired member at the time of the first retirement; and 2) use
11 the provisions of the coverage plan applicable to the member on
12 the date of the first retirement; and

13 (c) the recalculated pension shall not
14 be less than the amount of the suspended pension.

15 [~~F.~~] G. The pension of a member who has three or
16 more years of service credit under each of two or more coverage
17 plans shall be determined in accordance with the coverage plan
18 that produces the highest pension. The pension of a member who
19 has service credit under two or more coverage plans but who has
20 three or more years of service credit under only one of those
21 coverage plans shall be determined in accordance with the
22 coverage plan in which the member has three or more years of
23 service credit. If the service credit is acquired under two
24 different coverage plans applied to the same affiliated public
25 employer as a consequence of an election by the members,

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1 adoption by the affiliated public employer or a change in the
2 law that results in the application of a coverage plan with a
3 greater pension, the greater pension shall be paid a member
4 retiring from the affiliated public employer under which the
5 change in coverage plan took place regardless of the amount of
6 service credit under the coverage plan producing the greater
7 pension; provided the member has three or more years of
8 continuous employment with that affiliated public employer
9 immediately preceding or immediately preceding and immediately
10 following the date the coverage plan changed. The provisions
11 of each coverage plan for the purpose of this subsection shall
12 be those in effect at the time the member ceased to be covered
13 by the coverage plan. "Service credit", for the purposes of
14 this subsection, shall be only personal service rendered an
15 affiliated public employer and credited to the member under the
16 provisions of Subsection A of Section 10-11-4 NMSA 1978.
17 Service credited under any other provision of the Public
18 Employees Retirement Act shall not be used to satisfy the
19 three-year service credit requirement of this subsection."

20 Section 2. REPEAL.--Laws 2004, Chapter 2, Section 1 is
21 repealed.

22 Section 3. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2009.
24
25